

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW JERSEY**

|   |   |                                     |
|---|---|-------------------------------------|
|   | § | Case No. 1:14-CV-03722-JBS-JS       |
|   | § |                                     |
|   | § |                                     |
| <i>In Re: Caterpillar, Inc. C13 &amp; C15</i> | § | <b>JANIE A. AGUIAR d/b/a NEVADA</b> |
|   | § | <b>TRUCKING'S OPPOSED MOTION TO</b> |
| <i>Engine Products Liability Litigation</i>   | § | <b>OPT OUT OF CLASS ACTION</b>      |
|   | § | <b>SETTLEMENT</b>                   |

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JANIE A. AGUIAR d/b/a NEVADA TRUCKING (hereinafter referred to as "NT") and files this her Motion to Opt out of Class Action Settlement under this cause and will respectfully show the Court as follows:

**Background**

1. Janie A. Aguiar, owner of Nevada Trucking, operated within the State of Texas for decades. In 2008, Ms. Aguiar purchased two trucks for her business. Both trucks had the C15 Engines produced by Caterpillar, Inc. After multiple issues with the trucks, including breakdowns and failures as well as the warranty not being upheld by Caterpillar, Inc. and Rush Truck Centers of Texas, Inc. (who sold her the engines), Ms. Aguiar was forced to close down the business, but not before completely emptying out and cashing in on her personal savings, life insurance policy and retirement funds in order to try to keep the business afloat.

2. Ms. Aguiar filed suit on July 13, 2012. It is entitled *Janie A. Aguiar d/b/a Nevada Trucking v. Caterpillar, Inc., Rush Truck Centers of Texas, Inc. and PACCAR, Inc. d/b/a Peterbilt Motor Company*; Cause No. 2012-CI-11367 (in the 45<sup>th</sup> Judicial District Court of Bexar County, Texas) (located within San Antonio, Texas). Ms. Aguiar proceeded with the case *pro se* at first

until she retained this firm to represent her on August 12, 2014. We have been diligently working towards trial ever since we were retained.

### **Opt Out Notice Not Received**

3. This firm, as well as Ms. Aguiar, were not informed there was a class action suit in which Nevada Trucking was to opt out prior to receiving a call from one of the class action's Plaintiffs' counsel. No notice was received before the deadline in which to opt out. The business has been closed since 2012 so no mailings that may have been sent to Nevada Trucking regarding this lawsuit, the settlement or an option in which to decline to take part in the benefit of the settlement were received. Apparently, notice was provided based on the warranty address provided by the Defendants. The warranty address was the business address and no notice was received of the opt out via mail. It was not until we received a call from Mr. Cecchi, counsel for one of the class action's Plaintiff, regarding qualifications for the settlement that we were aware of the suit.

4. The Defendants, Caterpillar and Rush were well aware the Texas lawsuit was underway and that Ms. Aguiar was represented by counsel. They had been defending the lawsuit since 2012 and were aware of Ms. Aguiar's counsel and contact information since 2014. However, they failed to provide that information to Mr. Cecchi in order to provide proper notice.

### **Aguiar is Prosecuting and Has a Current Case**

5. The Texas case has been progressing over the past four years. Matters were winding up for trial next month (November 2016) when this issue arose. It would not be equitable to force Aguiar to take a settlement which does not incorporate lost profits or the close of her business. Her claims incorporate such damages. Aguiar only had a fleet of two trucks and when both suffered failures due to the product defects, she was unable to earn any money. This resulted in the closing

of her entire business. She was not in a position where she had a large fleet which could absorb certain trucks being down. The times she was without the vehicles far exceeded the regular maintenance schedule. Thus, her damages go beyond merely warranty issues or a few thousand dollars' worth of repairs.

6. The Defendants are the same (Caterpillar and Rush) and they have been defending the case for the past four years. They too were prepared for trial in November 2016. They will not be prejudiced by going to trial, especially since they were prepared for trial in Texas.

### **Request to Opt Out**

7. Due to the fact the deadline in which to opt out of the settlement has passed, Ms. Aguiar respectfully requests leave in which to opt out of the class action settlement and proceed with her own case in Bexar County, Texas. The failure to opt out within the given time period was not the fault of Aguiar as she was not provided notice of the opt out time period due to the close of her business. The Defendants knew who Aguiar's counsel was and did not provide the information to allow proper notice.

8. We had a scheduled jury trial for November 7, 2016. However, due to the presence of this case being brought to our attention and the possibility of conflicting judgments, the Texas case was suspended pending this Court's ruling on this motion.

9. Further, counsel for Ms. Aguiar and Nevada Trucking are not licensed to practice within the State of New Jersey. Counsel for Ms. Aguiar and Nevada Trucking is licensed to practice law in all U.S. District Courts in Texas, the U.S. Court of Appeals for the Fifth Circuit out of New Orleans, and the United States Supreme Court – just not in New Jersey. However, since this is a multi-district class action case, counsel for Ms. Aguiar and Nevada Trucking does not believe a *pro hac vice* is required in order to file a motion for this case within this respective Court.

However, should the Court feel differently and wish a *pro hac vice* to be filed, counsel for Ms. Aguiar and Nevada Trucking will be happy to oblige.

10. Counsel for Ms. Aguiar sent a letter, and Mr. Cecchi's request, advising of the situation and a request to opt out after the deadline. Mr. Cecchi advised the Court in a hearing on or around September 20, 2016 in which the Court advised Ms. Aguiar should file a formal motion to opt out before the Court would consider it. Counsel for Ms. Aguiar sent a letter to all counsel for a certificate of conference on the motion for leave to opt out late. The responses are attached to this motion. In essence, the Defendants not only oppose the opt out, but object to Ms. Aguiar filing a motion in the first place. Therefore, this motion should be considered opposed. Mr. Cecchi does not oppose this motion.

11. Should this Court require a hearing in order to rule on this motion, counsel for Ms. Aguiar respectfully requests the ability to attend by phone as opposed to in person. In the alternative, counsel requests the Court consider the motion by submission. While counsel for Ms. Aguiar will appear before the Court in person, if required, the burden and logistics make it difficult and costly, especially since Ms. Aguiar lost her entire business and does not have available funds for such travel. Counsel respectfully requests the Court take such burden into consideration.

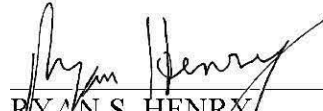
#### PRAYER

WHEREFORE, PREMISES CONSIDERED, Janie A. Aguiar and Nevada Trucking prays this Court grant this Motion for Leave to Opt Out of Class Action Settlement upon its submission, allow Ms. Aguiar and Nevada Trucking to be opted out of the settlement by such order, and allow Ms. Aguiar the ability to go forward with her case in Bexar County, Texas against Caterpillar and Rush without prejudice. Janie A. Aguiar and Nevada Trucking pray for such further relief, in law or in equity, they may show themselves justly entitled to.

Signed this 14<sup>th</sup> day of October, 2016.

Respectfully Submitted,

THE LAW OFFICES OF RYAN HENRY, PLLC  
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A handwritten signature in black ink, appearing to read "Ryan Henry", is written over a horizontal line.

RYAN S. HENRY  
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ARTIN T. DEROHANIAN  
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**CERTIFICATE OF SERVICE**

This firm hereby certifies that the forgoing was served unto the person(s) listed below in the manner(s) listed below on this the 17th day of October, 2016.

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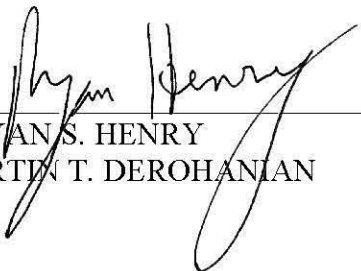
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RYAN S. HENRY  
ARTIN T. DEROHANIAN

## Brenna Green

---

**From:** Roberta Yard <r.yard@rwblawfirm.com>  
**Sent:** Friday, September 30, 2016 9:35 AM  
**To:** Brenna Green; Garrett Blanchfield  
**Cc:** Ryan Henry; Artin DerOhanian; Jenn Stuart  
**Subject:** RE: Nevada Trucking Request to Opt out of Class Action Settlement; In Re Caterpillar; Case No. 1:14-CV-03722  
**Attachments:** Caterpillar - class counsel order.pdf; Caterpillar Prelim Approval Order.pdf

Ms. Green,

Mr. Blanchfield and I are in receipt of your request but unfortunately we are unable to assist you. The court named the law firms of Shepherd, Finkelman, Miller & Shah, LLP, Cohen Milstein Sellers & Toll PLLC, Quantum Legal, LLC, and Carella Byrne Cecchi Olstein Brody & Agnello, P.C., as lead counsel in this matter. Accordingly, those firms alone have the responsibility of managing the case, which includes "Coordinating the court filings and arguments before the Court on issues common to all Plaintiffs; Developing and proposing to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all Plaintiffs; calling meetings of counsel for Plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or of the Court; (and) acting as a spokesperson for all Plaintiffs."

I have attached the order appointing interim lead counsel, as well as the order granting preliminary approval of the settlement for your review.

Best regards,

Roberta A. Yard  
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---

**From:** Brenna Green [mailto:Brenna.Green@rshlawfirm.com]  
**Sent:** Thursday, September 29, 2016 5:12 PM  
**To:** blanchfield@rwblawfirm.com; Roberta Yard <r.yard@rwblawfirm.com>  
**Cc:** Ryan Henry <Ryan.Henry@rshlawfirm.com>; Artin DerOhanian <Artin.DerOhanian@rshlawfirm.com>; Jenn Stuart <jenn.stuart@rshlawfirm.com>  
**Subject:** Nevada Trucking Request to Opt out of Class Action Settlement; In Re Caterpillar; Case No. 1:14-CV-03722

Dear Counsel,

Please find attached correspondence from Ryan Henry, who is an attorney in Texas. The correspondence relates to the class action suit in New Jersey entitled *In Re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* Case No. 1:14-CV-03722. We look forward to hearing from you.

Thank you,

***Brenna Green***

Senior Paralegal  
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## Brenna Green

---

**From:** Brenna Green  
**Sent:** Friday, September 30, 2016 9:54 AM  
**To:** 'Scott George'  
**Subject:** RE: Nevada Trucking Request to Opt out of Class Action Settlement; In Re Caterpillar; Case No. 1:14-CV-03722

Thank you sir.

---

**From:** Scott George [mailto:sgeorge@seegerweiss.com]  
**Sent:** Friday, September 30, 2016 8:20 AM  
**To:** Brenna Green <Brenna.Green@rshlawfirm.com>  
**Cc:** Ryan Henry <Ryan.Henry@rshlawfirm.com>; Artin DerOhanian <Artin.DerOhanian@rshlawfirm.com>; Jenn Stuart <jenn.stuart@rshlawfirm.com>  
**Subject:** RE: Nevada Trucking Request to Opt out of Class Action Settlement; In Re Caterpillar; Case No. 1:14-CV-03722

I will forward this correspondence to Co-Lead Class Counsel in the litigation: Ted Leopold, Esquire, of Cohen Milstein Sellers & Toll, PLLC; James C. Shah, Esquire, of Shepherd, Finkelman, Miller & Shah, LLP; and Richard Burke, Esquire, of Quantum Legal, LLC.

Truly,

Scott

Scott George  
Seeger Weiss LLP

---

**From:** Brenna Green [mailto:Brenna.Green@rshlawfirm.com]  
**Sent:** Thursday, September 29, 2016 6:12 PM  
**To:** Scott George  
**Cc:** Ryan Henry; Artin DerOhanian; Jenn Stuart  
**Subject:** Nevada Trucking Request to Opt out of Class Action Settlement; In Re Caterpillar; Case No. 1:14-CV-03722

Dear Mr. George,

Please find attached correspondence from Ryan Henry, who is an attorney in Texas. The correspondence relates to the class action suit in New Jersey entitled *In Re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* Case No. 1:14-CV-03722. We look forward to hearing from you.

Thank you,

***Brenna Green***

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**Brenna Green**

---

**From:** Brenna Green  
**Sent:** Friday, September 30, 2016 9:54 AM  
**To:** 'Kevin Hoerner'  
**Subject:** RE: Nevada Trucking Request to Opt out of Class Action Settlement; In Re Caterpillar; Case No. 1:14-CV-03722

Thank you sir.

---

**From:** Kevin Hoerner [mailto:kth@bhtylaw.com]  
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**Subject:** Re: Nevada Trucking Request to Opt out of Class Action Settlement; In Re Caterpillar; Case No. 1:14-CV-03722

I'll forward your letter to Lead Counsel for response regarding your request to opt out. I have copied them here.

Kevin

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On Sep 29, 2016, at 5:12 PM, Brenna Green <[Brenna.Green@rshlawfirm.com](mailto:Brenna.Green@rshlawfirm.com)> wrote:

Dear Mr. Hoerner,

Please find attached correspondence from Ryan Henry, who is an attorney in Texas. The correspondence relates to the class action suit in New Jersey entitled *In Re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* Case No. 1:14-CV-03722. We look forward to hearing from you.

Thank you,

***Brenna Green***

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<Corr to Hoerner re Class Action Opt Out.pdf>